IN THE SUPREME COURT OF THE UNITED STATES

JAMES EDWARD DROPE,)
)
Petitioner,)
)
vs.)
)
STATE OF MISSOURI,)
)
Respondent.)

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI WITHOUT PREPAYMENT OF COSTS AND TO PROCEED IN FORMA PAUPERIS

Petitioner James Edward Drope, pursuant to Rule 53, asks leave to file the attached petition for writ of certiorari to the Missouri Court of Appeals, St. Louis District, without prepayment of costs and to proceed in forma pauperis. The petitioner's and petitioner's attorney's affidavits in support are attached hereto.

Charles A. Weiss
Attorney for Petitioner
500 North Broadway
St. Louis, Missouri 63102
231-8600

Certificate of Service

A true copy of the above and foregoing was deposited in the U.S. Mail, first class, postage prepaid, to: John C. Danforth, Attorney General, State of Missouri, Jefferson City, Missouri 65101, on this 3 day of January, 1974.

Charles A. Weiss

IN THE SUPREME COURT OF THE UNITED STATES

JAMES EDWARD DROPE,)
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Petitioner,)
)
vs.)
)
STATE OF MISSOURI,)
)
Respondent.)

PETITIONER'S AFFIDAVIT IN SUPPORT OF REQUEST FOR LEAVE TO FILE PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT WITHOUT PREPAYMENT OF COSTS AND TO PROCEED IN FORMA PAUPERIS

I, James Edward Drope, being duly sworn, depose and say in support of my application for leave to proceed without being required to prepay costs and fees:

1. I am the petitioner in the above entitled case.

2. This affidavit is being executed for use in support of my motion for leave to proceed in forma pauperis.

3. I am currently a prisoner and confined in the Missouri Training Center for Men at Moberly, Missouri. I own no property, stocks, or bonds. I have no savings. Because of my proverty, I am unable to pay the fees and costs of my said proceeding and am unable to give security for the costs of this proceeding.

4. I sincerely and firmly believe I am entitled to the redress I seek in said cause.

5. I am unable to pay fees and costs for preparing and transmitting the transcripts and records of the courts below and am unable to give security therefor.

6. The nature of the proceeding is as follows:
I was convicted in absentia by a St. Louis City Circuit Court jury on June 25, 1969, of raping my own wife. On several occasions before my trial began my attorney petitioned the court both in writing and orally for a psychiatric examination. The court summarily denied all such requests. During the course of my trial apparently I attempted suicide by shooting myself in the stomach with a rifle, although I cannot recall any of the happenings surrounding the shooting. I spent 21 days in the hospital and underwent two operations during that time. However, my trial continued in my absence and I was found guilty by the jury. After hearings for a new trial, the judge, on October 21, 1969, sentenced me to life imprisonment. At no time during the proceedings was I accorded a psychiatric examination or hearing to determine my mental competence to be tried, convicted and sentenced or to voluntarily absent myself from trial. My trial attorney failed to file my direct appeal on time and after I was successful in obtaining leave to appeal out of time, the court appointed my trial attorney to assist me on appeal. He failed to raise on direct appeal the issue of my right to a psychiatric examination or hearing. Subsequently, I have filed a motion under Missouri Rule of Civil Procedure 27.26 to have my judgment, conviction and sentence set aside on the grounds that I was unconstitutionally denied due process. Both the trial court and the Missouri Court of Appeal, St. Louis District, denied my motion and the Missouri Supreme Court refused to transfer the case. I have been advised by my attorney that he believes I am entitled to the relief which I request. I also feel that under the teachings of Pate v. Robinson, 383 U.S. 375 (1966) I am

entitled to the relief requested in my habeas corpus motion.

I am now asking the Supreme Court to review, on a petition for writ of certiorari, the decision of the Court below. In my view, the issues are:

(1) I was denied due process by not being accorded a hearing to determine my mental competency to be tried, convicted and sentenced.

(2) I was denied due process by being tried and convicted in absentia, where the court, without any hearing into my mental competency, determined that I had "voluntarily" shot myself for the purpose of avoiding trial.

7. I have been advised by my court-appointed attorney of my right to file a petition for certiorari in this court, and I have requested of him that such a petition be filed.

James Edward Drope
James Edward Drope

STATE OF MISSOURI)
COUNTY OF KANSAS CITY) SS.

Subscribed and sworn to before me this 11 day of Dec., 1973.

Sandy Bauer
Notary Public

My commission expires:
Sept. 7, 1975

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. _____

JAMES EDWARD DROPE,
PETITIONER

vs.

STATE OF MISSOURI,
RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE MISSOURI COURT OF APPEALS, ST. LOUIS DISTRICT

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Of Counsel

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JAMES EDWARD DROPE,)
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Petitioner,)
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vs.)
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STATE OF MISSOURI,)
)
Respondent.)

PETITION FOR WRIT OF CERTIORARI TO THE
MISSOURI COURT OF APPEALS, ST. LOUIS DISTRICT

James Edward Drope, petitioner, herein, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Missouri Court of Appeals, St. Louis District, entered in this action on June 5, 1973.

OPINIONS BELOW

This is a post-conviction proceeding. The opinion of the Missouri Court of Appeals is attached hereto as Exhibit A and is reported at 498 S.W.2d 838. Attached as Exhibit B is the order of the Missouri Court of Appeals dated 8/16/73 denying petitioner's motion for rehearing or transfer. Attached as Exhibit C is the order of the Missouri Supreme Court dated 10/8/73 denying petitioner's application to transfer. Attached as Exhibit D is the opinion of the Missouri Supreme Court on petitioner's direct appeal from his conviction which is reported at 462 S.W.2d 677 (1970). Attached as Exhibit E are the unpublished statement of facts, conclusions of law, and order of the Circuit Court of the City of St. Louis dated June 26, 1972.

JURISDICTION

The judgment of the Missouri Court of Appeals, St. Louis District, affirming the denial by the St. Louis City Circuit Court of Petitioner's motion to vacate this judgment of conviction and sentence pursuant to Rule 27.26 Mo.R.Civ.P., was entered on June 5, 1973. Petitioner's motion for rehearing or transfer to the Missouri Supreme Court was denied by the Missouri Court of Appeals on August 16, 1973. The Missouri Supreme Court denied Petitioner's application to transfer on October 8, 1973, and this petition for certiorari was filed within 90 days of that date. Jurisdiction of this court is founded upon 28 U.S.C.A. §1257(3).

QUESTIONS PRESENTED

1. Was the petitioner, who was on trial for raping his wife, entitled to a hearing under Pate v. Robinson, 383 U.S. 375 (1966), to determine his mental competency to stand trial, particularly in view of his mental history and his attempted suicide during the trial?

2. Under Diaz v. United States, 223 U.S. 442 (1912), may a defendant on trial for a capital offense be tried and convicted in absentia while being hospitalized after attempting suicide during the course of his trial?

CONSTITUTIONAL PROVISIONS INVOLVED

Amend. XIV, §1, U. S. Constitution

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The relevant facts necessary for a determination of the questions presented here are undisputed.

Petitioner in 1969 was charged with and convicted by a jury in a Missouri state court of raping his own wife, a capital offense under Missouri law (§559.260 Mo. Rev. Stat., 1969), and was sentenced to life imprisonment. Prior to petitioner's trial, his attorney repeatedly advised the court that petitioner was not mentally fit to stand trial, but at no time was petitioner accorded a psychiatric examination or hearing to determine his mental competency to be tried. During the course of his trial, petitioner attempted suicide by shooting and seriously wounding himself, and was tried and convicted in absentia. He is seeking by way of habeas corpus (Missouri Rule of Criminal Procedure 27.26) to have that conviction and sentence set aside.[1/]

The record is glaringly clear that although there was substantial evidence before the trial court which cast a doubt on petitioner's mental competency to stand trial, petitioner at no time has

---

1/ Petitioner's Rule 27.26 motion was filed by him, pro se, on April 16, 1971. The undersigned counsel was appointed by the court on May 7, 1971, to assist petitioner.

been accorded a psychiatric examination or hearing to determine his mental competency to be tried, convicted or sentenced, or to determine his mental capacity for the purpose of deciding whether his attempted suicide during the course of his trial, which resulted in his conviction in absentia, was done voluntarily or willfully to avoid trial.

THE ORIGINAL TRIAL

Before petitioner was sentenced, the following facts were before the trial court:

(1) Petitioner was charged with the rape of his own wife, a crime so rare that no other reported Missouri case deals with such an offense.

(2) After the incident, which was alleged to have occurred on January 17, 1969, petitioner resumed living with his wife at her request. Petitioner's wife told petitioner's attorney that she believed that petitioner was mentally sick and needed psychiatric treatment. In fact, on February 12, 1969, she signed the following statement which was presented at trial:

> "Marianne Drope states that I do not desire to prosecute my husband James Drope on the charge of sodomy of which I complained to the police of the City of St. Louis on the date of January 17, 1969. My reason for not proceeding with this prosecution is that I believe that my husband is suffering from a mental condition. We have five small children. I further believe if my husband receives treatment for his mental condition from a psychiatrist that he will be much better off than having been prosecuted for this offense."

Petitioner's wife further testified that on occasions when petitioner did not get his way or was worried about something, he would roll

down stairs. When asked if she knew why he did such a thing, she replied, "The only thing I can tell you is what they told him many times at City Hospital, that is something he does upon hisself." She stated that during their marriage, petitioner always had been very nervous at times but had been even more nervous since the alleged incident of January 16, 1969. She further testified that it was recommended that petitioner undergo psychiatric treatment at Malcolm Bliss Hospital, "but Jim wouldn't go."

(3) Petitioner's trial counsel believed strongly enough that petitioner was mentally ill that he arranged for petitioner to be examined by a psychiatrist. After a brief interview of petitioner five months before trial, the private psychiatrist found that appellant was very neurotic and depressed, that he was on the borderline of being mentally deficient and suffered from chronic anxiety reaction with depression.[2/] Petitioner's counsel filed a written request with the court for a psychiatric examination. On the same day, the prosecuting attorney filed a memorandum stating that the State of Missouri "does not oppose the Motion for a Psychiatric Examination of the Defendant." This motion was never ruled upon.

On the day that petitioner's case was scheduled for trial, June 23, 1969, petitioner's counsel called the court's attention to his motion for a psychiatric examination and orally moved that "I am objecting to going to trial with this Defendant also for the reason that the Defendant is not a person of sound mind and should have a

2/ Dr. Shuman, the private psychiatrist, did not examine petitioner for the purpose of determining his mental state to stand trial, nor did he make any findings concerning that point.

further psychiatric examination before the case should be forced to trial." The motion was summarily overruled, and the trial began.

(4) On the morning of the second full day of his trial, June 25, petitioner shot himself in the stomach. He was rushed unconscious to St. Louis City Hospital and subsequently underwent two operations and spent 21 days in the hospital. The trial court was notified within a few hours after petitioner was found wounded. However, over the strenuous objections of defense counsel, the court did not halt the trial, but proceeded with trial without holding any hearing or making any inquiry whatsoever concerning petitioner's mental state or ability to proceed or to have made a voluntary and intentional decision to absent himself from trial. The prosecution called five more witnesses and concluded its case on June 25. Petitioner's counsel filed a motion for judgment of acquittal and again stated:

> "The Court should have declared a mistrial when defendant moved for same, when it became apparent that the defendant shot himself and could not further attend the trial as he is confined as a Patient in the City Hospital of St. Louis, No. 1, therefore depriving him of being confronted by his accusers as he is being tried in absentia."

The court summarily overruled both motions. Defense counsel then announced that he had no evidence to present, as the Defendant was not available to testify. The jury returned a guilty verdict on June 25, 1969.

Petitioner's motion for a new trial was denied and on October 3, 1969, he was sentenced to life imprisonment.

THE HABEAS CORPUS HEARING

At the evidentiary hearing on petitioner's habeas corpus

motion, which was heard by the same judge who presided over his trial, petitioner called two psychiatrists to testify: Dr. Shuman, who had interviewed petitioner five months before his trial, and Dr. Jon Tek Lum, who is director of Forensic Services at Malcolm Bliss Missouri State Mental Health Center.

Both psychiatrists, given the facts present before the trial court of petitioner's behavior, his past medical and social history and especially his attempted suicide during trial, unequivocally testified that there was reasonable cause to believe that petitioner was not mentally competent to proceed with trial. Both stated that the evidence warranted a psychiatric examination of petitioner in order to determine whether he in fact lacked the mental capacity to understand the proceedings going on around him.

Both psychiatrists further testified that in almost every instance people who attempted suicide are mentally ill and are not acting rationally. Dr. Shuman explained that psychiatrically well (normal) persons never or rarely make suicide attempts, regardless of the severity of the social stresses to which they are subjected, and that any person clearly about to commit suicide is in need of immediate and definitive treatment. Dr. Lum testified that studies have shown that eighty-five per cent of the people who make suicide attempts have true psychiatric disorders, and show poor insight and judgment. Such people may be having distortions of reality and irrational thought processes. Dr. Lum pointed out that if petitioner was acting under a mental disorder when he attempted to kill himself, such decision may not have been voluntary and willful.

After an adverse finding by the trial court, petitioner appealed. Although the Missouri Court of Appeals recognized that Pate v. Robinson, 383 U.S. 375 (1966), stated the applicable law, the appellate court simply held that the evidence before the trial court was not sufficient to raise a reasonable doubt as to petitioner's mental competency.

REASONS WHY THE WRIT SHOULD BE GRANTED

I. THE DECISION OF THE STATE COURT BELOW IS REPUGNANT TO THIS COURT'S GUIDELINES AND HOLDING ENUCIATED IN PATE v. ROBINSON, 383 U.S. 375 (1966), AND DENIED PETITIONER DUE PROCESS.

Under the guidelines and holding enunciated in Pate v. Robinson, 383 U.S. 375 (1966), petitioner under the peculiar facts and circumstances present in his case was entitled to a psychiatric examination and hearing before he was finally tried, convicted and sentenced. Despite repeated supplications by petitioner's defense counsel and substantial evidence raising a doubt as to petitioner's competence to proceed with his trial, including petitioner's near fatal attempt at suicide during his trial, no psychiatric examination or hearing was accorded petitioner at any stage of the proceedings.

Federal constitutional law and not state law controls an accused's right to a hearing on his mental competency to stand trial. Pate v. Robinson, supra, conclusively held that an accused's right to a hearing to determine his mental competency to be tried and convicted was a fundamental right guaranteed him under the due process clause of the Fourteenth Amendment. Pate holds simply that where the evidence raises a bona fide doubt as to a defendant's competency to stand trial, the judge on his own motion must conduct a hearing for

the purpose of determining the defendant's mental state. Petitioner's case for all meaningful purposes cannot be distinguished from Pate v. Robinson, which respondent concedes is the leading authority. The state court is plainly in error in failing to apply Pate to the facts of this case.

Even the dissenting opinion by Mr. Justice Harlan in Pate supports reversal of petitioner's conviction. The dissent notes that:

> "The court [the majority] appears to hold that a defendant's present incompetence may become sufficiently manifest during a trial that it denies him due process for the trial court to fail to conduct a hearing on that question on its own initiative. I do not dissent from this very general proposition" . . . 383 U.S. 388.

The dissent did not find the facts present before the Illinois trial court sufficient to raise a bona fide doubt as to defendant's competence. The dissent pointed out, however, that had one of Robinson's irrational acts occurred at trial, then there would have been a bona fide doubt raised that would have required a hearing:

> "[t]he pattern revealed may best indicate that Robinson did function adequately during most of his life interrupted by periods of severe derangement that would have been quite apparent had they occurred at trial."

383 U.S. 389 (Emphasis added).

Exactly what the dissent would require in Pate occurred in petitioner's trial - a clear act of irrational or deranged behavior in the act of attempted suicide.

The facts and circumstances leading to petitioner's conviction call more strongly for reversal than in the Pate case. In Pate, no request for a psychiatric examination or hearing was ever made. Most of the irrational acts and behavior on the part of the defendant

had occurred years before the trial. He had been examined by a psychiatrist two or three months before his trial and was specifically found to be competent to proceed with trial. At trial he displayed mental alertness as well as understanding and knowledge of the proceedings and actually discussed the proceedings with the court in an intelligent manner.

On the other hand, in the case at bar, a month before his trial, petitioner's counsel specifically moved the court for a psychiatric examination; included with the motion was a report of a psychiatric evaluation that had been made at defense counsel's request concluding that petitioner was mentally ill and needed psychiatric treatment; the prosecutor filed a memorandum consenting to a psychiatric examination; a further specific request by petitioner's trial attorney for a psychiatric examination was made at the time of petitioner's trial; petitioner's counsel argued vigorously that petitioner was not of sound mind and was not fit to proceed with trial; petitioner's wife testified that she believed petitioner was mentally sick and a signed statement was introduced to that effect; she further testified that he had rolled down stairs when he did not get his way.

But even more revealing was the blatant fact that petitioner attempted suicide by shooting and seriously wounding himself after the first full day of his trial. At the post-conviction hearing, two psychiatrists testified that in their opinion there was sufficient evidence to raise a reasonable doubt that petitioner lacked the capacity to proceed with his trial. Both explained that there was more than enough evidence present before the court to require a thorough evalua-

tion to determine whether petitioner was mentally competent to stand trial. This stands uncontradicted. No evidence at any time, before, during or after the trial, was offered by the state showing otherwise.

The state court has clearly misread Pate v. Robinson and has erroneously failed to acknowledge that petitioner's case falls squarely within Pate's scope. It has taken an impermissibly circumscribed and unconstitutionally narrow view of the facts and circumstances casting doubt on petitioner's mental capacity to stand trial. 3/

The appellate court failed to consider all of the evidence as a whole but unjustifiably considered certain aspects of the evidence in isolation from the others. Even if it be assumed for the sake of argument, that each of the facts and circumstances present in petitioner's case individually and standing alone, does not raise a reasonable doubt, certainly when considered together, and especially in light of the act of attempted suicide, they constitute sufficient evidence that raises as a matter of law a reasonable doubt as to petitioner's mental competency.

This is one of those rare cases where an accused's trial and conviction borders on a mockery of justice. His trial was unduly hurried. Even though his attorney protested to the court that petitioner was not fit to proceed, and although he attempted suicide during the course of his trial, the trial judge did not even pause to consider the question of his mental competency or the voluntariness of his suicide attempt, but proceeded with the trial in petitioner's absence.

3/ Case law, in addition to Pate, overwhelmingly supports a vacation of petitioner's conviction. See, for example, Moore v. United States, 464 F2d 663 (9th Cir. 1972); White v. United States, 470 F2d 727 (5th Cir. 1972); Negron v. New York, 434 F2d 386 (2d Cir. 1970); Kibert v. Peyton, 383 F2d 566 (4th Cir. 1967); Taylor v. United States, 282 F2d 16 (8th Cir. 1960).

It is submitted that since there are no relevant facts in dispute and since petitioner's case falls so squarely within the ambit of Pate v. Robinson, no full hearing or detailed briefs are needed. Certiorari should be granted, and the decision of the state court should be summarily reversed and petitioner's conviction and sentence vacated. 4/

II. PETITIONER, ON TRIAL FOR A CAPITAL OFFENSE, WAS DENIED DUE PROCESS BY BEING TRIED AND CONVICTED IN ABSENTIA AFTER HE ATTEMPTED SUICIDE DURING THE COURSE OF HIS TRIAL WHERE THE COURT UTTERLY FAILED TO MAKE ANY INQUIRY OR FINDING AS TO PLAINTIFF'S MENTAL CAPACITY TO HAVE VOLUNTARILY AND WILLFULLY ABSENTED HIMSELF FROM TRIAL.

Petitioner, who was on trial for a capital offense, and faced the possibility of a death sentence, was tried and convicted in absentia after he attempted suicide during the course of his trial. The trial and conviction of petitioner while he lay in a hospital undergoing surgery for a bullet wound in the stomach clearly contra-

4/ At the time of oral argument of petitioner's appeal from denial of his Rule 27.26 motion, the State of Missouri conceded that in retrospect, petitioner should have been given a psychiatric examination but the State took the position that any error in this regard could be corrected by remanding the case at this time for the appointment of a psychiatrist and a hearing to determine whether petitioner at the time of trial four years ago was competent to stand trial. (See copy of letter attached as Exhibit F.) This court in Pate rejected such a remedy. Pate held that there are too many proof problems in retrospectively determining an accused's competency to stand trial. The only sufficient remedy is a new trial. Pate v. Robinson, supra at 386-88.

venes this court's holding in Diaz v. United States, 223 U.S. 442 (1912), that an accused who is on trial for a capital offense can not be tried in absentia.

The trial court was notified within a few hours after petitioner was found nearly dead on the morning of the second day of his trial, but over the strenuous objection of defense counsel, the trial was continued without the presence of petitioner. No hearing was had to determine the circumstances surrounding the near-fatal shooting of petitioner. Defense counsel was not even given time to confer with petitioner's relatives who found him near death. The trial continued without so much as a hesitation. The prosecution called four more witnesses in addition to producing proof of a prior conviction. At no time was petitioner present to confront these witnesses, nor did he have any opportunity to take the stand and testify in his own defense to the jury.

It is well established that a defendant has a constitutional right to be present at every stage of the trial proceedings, but, except in capital cases, it has likewise been held that a defendant can voluntarily waive such right. Diaz v. United States, supra; Illinois v. Allen, 397 U.S. 337 (1970); Cureton v. United States, 396 F2d 671 (D.C. Cir. 1968). However, where a defendant remains away during his trial, the court may proceed only if it is clearly established that his absence is voluntary. Cureton v. United States, 396 F2d at 675.

Historically, courts have distinguished between capital and noncapital cases in ruling on the issue of trial in absentia.

This court held in Diaz, supra, at 455, that an accused who is charged with a capital offense is incapable under the law of waiving his right to be present at the proceedings leading to his sentence.

> "And with like accord, they [the courts] have regarded an accused who is in custody and one who is charged with a capital offense as incapable of waiving the right; the one because his presence or absence is not within his own control, and the other because, in addition to being usually in custody, he is deemed to suffer the constraint normally incident to an apprehension of the awful penalty that would follow conviction." Id. at 455. (Emphasis added.)

More recently, this principle was recognized by the court in Cureton v. United States, supra, at 673-674.

Even if petitioner under the law could have waived his right to be present by voluntarily absenting himself from trial, no meaningful determination was made at any time by the trial court that petitioner voluntarily absented himself.

Before sentencing, the trial court was aware of petitioner's past psychiatric history, his mental disorders, states of hysteria and depression, the report by Dr. Shuman that petitioner needed psychiatric treatment, the statement signed by petitioner's wife that he was mentally sick, the repeated supplications by petitioner's counsel for a psychiatric examination, signed memorandum by the State consenting to a psychiatric examination of petitioner, petitioner's counsel's belief and protestations that petitioner was not fit to proceed with trial, and the act of attempted suicide by petitioner during his trial.

Neither the trial court nor the reviewing court considered the fact of petitioner's absence in light of his mental condition. Yet, the events that transpired before and during petitioner's trial compel the conclusion that the issue of petitioner's absence from trial cannot be separated from the issue of his mental capacity to stand trial in the first place. Indeed, in retrospect, it appears that Dr. Shuman's conclusion that petitioner was suffering from a deep state of depression and needed psychiatric treatment was borne out and dramatically corroborated by petitioner's attempt on his own life.

The court has held that courts must indulge every reasonable presumption against the loss of constitutional rights. Johnson v. Zerbst, 304 U.S. 458, 464 (1938). Furthermore, a waiver of rights cannot be termed voluntary if it is made by a person whose mental condition was such that the waiver was not the product of any meaningful act of volition. The law is appropriately explained by the court in United States v. Silva, 418 F.2d 328, 330 (2d Cir. 1969):

> "A confession or waiver of rights cannot be termed voluntary if it is made by a person whose mental condition at the time was such that 'the confession most probably was not the product of any meaningful act of volition.' . . . Once it becomes apparent that the accused's mental condition is a factor that ought to be looked into in relation to the admissibility of his confession, the trial judge must hold a hearing at which relevant evidence may be offered, including the testimony of experts from which the court will decide whether the accused was at the time he confessed so mentally ill that he was unable, with intelligence, knowledge and understanding, to relinquish or abandon a known right or privilege which was his, or whether 'the confession most probably was not the product of any meaningful act of volition'. If it is found that either of these things is so, the confession must be excluded."

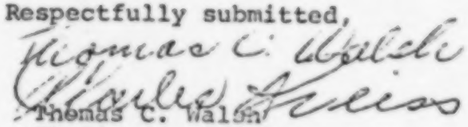
See also Pate v. Robinson, 383 U.S. at 384; Taylor v. United States, 282 F.2d 16, 23 (8th Cir. 1960).

The same rule is applicable in appellant's case where the issue is whether his act of attempted suicide was voluntarily and willfully done with a clear, rational and ordered mind. A meaningful determination could have been made only after a psychiatric examination and a hearing directed to that very issue. Yet, at no time before appellant was sentenced was an inquiry made by the court to determine appellant's mental condition.

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be granted, and the judgment of the Missouri Court of Appeals should be reversed and petitioner's conviction and sentence should be vacated.

Respectfully submitted,



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